

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|----------------------|--------------------------------|
| TYWANA ROYAL, | : |
| Plaintiff | : |
| v. | : Case No. 3:23-cv-228-KRG-KAP |
| AVEANNA HEALTH CARE, | : |
| Defendant | : |

Memorandum Order

In response to defendant's motion to dismiss at ECF no. 12, plaintiff filed a motion to amend the complaint at ECF no. 14. The proposed amended complaint is a permitted amendment as a matter of course under Rule 15(a)(1)(B), so the motion at ECF no. 14 is granted and the Clerk shall file the exhibit as the Amended Complaint at a separate docket number. That moots the motion to dismiss, so the motion at ECF no. 12 is denied.

The Amended Complaint is substantially the same as the original. It appears that plaintiff is chiefly trying to state a claim based on how the "large[] corpus of case law, dating back to 1973, in which [Pennsylvania] appellate courts have validated both facial and as-applied substantive due process challenges to statutory employment bans and other similar laws predicated upon prior convictions" applies in this case. The quote is from Megraw v. School District of Cheltenham Twp., 2018 WL 2012130, at *5 (Pa.Cmwlth. May 1, 2018). Both parties are familiar with Peake v. Commonwealth, 132 A.3d 506, 521 (Pa.Cmwlth. 2015), holding that a lifetime employment ban provision in the Older Adults Protective Services Act was unconstitutional on its face.

Accordingly, since I expect that defendant will renew its motion to dismiss and plaintiff will have to respond, in addition to any other arguments the parties wish to make about whether plaintiff has stated a claim under Title VII, the parties should address the question whether a claim based on Peake is a federal claim or one that in the absence of any other basis for federal jurisdiction must be brought in the state court.

DATE: January 31, 2024



Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

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